

process of making and product made. In supporting restriction, the Office has taken the position that the method of Claim 14 could be "materially altered" by use of cvd rather than epitaxy. However, no reason or example has been provided in the Office Letter that would support the conclusion that the proposed alternative is *materially different* as that term is contemplated in MPEP 806.05(f). That is, the Office has provided absolutely no reasoning to support its conclusion of material difference, nor has there been illustrated by example any concept that would lead to this ultimate conclusion. For example, it is not clear from the Office Letter whether it is the Office's position that the structure resulting from the proposed alternative process would be that described in Claim 1, or that the structure resulting from the proposed alternative would be different from that described in Claim 1. In this regard, Applicants submit that a *prima facie* case of Restriction has not been made out; rather, a conclusion of Restriction has been made without the necessary underlying support. In view of this situation, Applicants traverse the Restriction Requirement, and request its withdrawal.

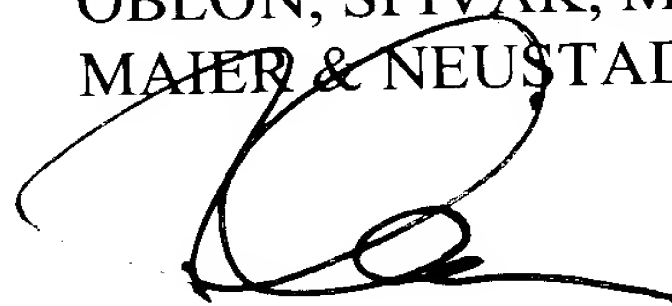
In addition, a proper Restriction necessitates a burden on the Office. In this case it appears that two, or a few more than two, subclasses would be involved in a search of all pending claims. It is respectfully submitted that a search of all pending claims would not present a burden on the Office.

The Office letter further requires that Applicant elect a Figure directed to an allegedly "patentable distinct" species. However, and again, there is no reasoning or support in the Office letter to allow a conclusion of patentably distinct species; rather, a conclusion of patentable distinctness is simply presented. Applicants thus traverse this requirement, but nevertheless elect Figures 1-8 for initial examination. Applicants request that Figure 38 be included within this group of Figures as Applicant would have elected Figure 38 if this Figure were listed in the proposed possibilities at page 3 of the Requirement.

Finally, Applicants note that the provisionally non-elected claims are directed to a method. In this regard Applicants respectfully request rejoinder of these claims per MPEP 821.04. The Examiner is authorized to amend the method claims to appropriately depend from allowable structure claims in order to place them in condition for allowance.

Respectfully submitted,

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